



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,949	07/03/2003	Theodosios Korakianitis	716875.6	4629
32809 7590 05/21/2007 NUCLEUS REMODELING, INC. 3646 DOVER PLACE ST. LOUIS, MO 63116			EXAMINER ALTER, ALYSSA M	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,949

Applicant(s)

KORAKIANITIS ET AL.

Examiner

Alyssa M. Alter

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 32-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/3/03 & 6/1/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Invention IV in the reply filed on 7/24/06 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 32-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are vague and appear to be method claims since it provides no further structure, but a mere recitation of intended use for such structure.

As to claim 32, 35, 39, 42, 57, the pump is not positively recited and merely inferentially included. As a result it is unclear if the Applicant is claiming a hydraulic pump in the system as a means of actuating the magnet.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 32-61 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claiming of structures being in

Art Unit: 3762

contact with or implanted within the body amounts to an inferential recitation of the body, which renders these claims non-statutory. For example, the examiner recommends changing "in fluid communication with the blood output of the great vessel" to --adapted to be in fluid communication with the blood output of the great vessel --. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Chardack (US 4,957,504). Chardack discloses an implantable blood pump with electromagnets located along the circumference and a permanent magnet disposed with the vessel on the helix 18 as seen in figures 1 and 3. The examiner considers the rotator or helix to be the one-way valve.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 32, 35-36, 39, 42-55 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurpanek (US 3,974,854). Kurpanek discloses an implantable artificial heart with magnets and a hydraulic pump as depicted in figure B2. Kurpanek discloses the claimed invention except for the annular or open center magnets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the shape of magnets, since it has been held that the configuration of the claimed element is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed element was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) See the MPEP 2144.04.

2. Claims 33-34, 37-38, 40-41 and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Kurpanek (US 3,974,854), as applied to claims 32, 35-36, 39, 42-58 and 61 above. The modified Kurpanek discloses the claimed invention except for the positioning of the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the placement of the device as taught by the modified Kurpanek to be disposed between the aortic valve and aortic arch or between the pulmonary valve or the pulmonary trunk since it was known in the art that to position a valve replacement system in proximity to the valve in need of replacement.

Claim Objections

1. Claims 53, 57-58 and 60 are objected to because of the following informalities:
the repetition of the lettering system of "a, b, c, d, ..." is confusing and makes the claims elements unclear. The examiner recommends incorporating an additional number scheme (such as, 1, 2, 3, .) or removing one of them. Appropriate correction is required.

Allowable Subject Matter

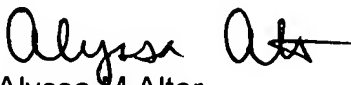
1. Claim 60 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and claim objections, set forth in this Office action.

Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Alyssa M Alter
Examiner
Art Unit 3762


GEORGE R. EVANISKO
PRIMARY EXAMINER

5/3/7